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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1925

No. 503

THE UNITED STATES OF AMERICA, PETITIONER

vs.

BUTTERWORTH-JUDSON CORPORATION

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT
OF APPEALS FOR THE SECOND CIRCUIT

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1 In United States District Court, Southern District of New York

HAY FOUNDRY AND IRON WORKS, COMPLAINANT
against } In Equity 23-324
BUTTERWORTH-JUDSON CORPORATION, DEFENDANT }

Notice of motion for judgment

SIRS: Please take notice that upon the annexed petition of United States of America verified the 17th day of December, 1924, and upon all the proceedings heretofore had herein, the undersigned will move this court at a term thereof for the hearing of motions to be held in the United States Courts and Post Office Building, at City Hall Park, in the Borough of Manhattan, city, county, State, and Southern District of New York, on the 23rd day of December, 1924, at 10.30 o'clock in the forenoon of that day, or as soon thereafter as counsel can be heard, for an order adjudging and decreeing that the United States of America is entitled to priority in payment and preference of its claims against the Butterworth-Judson Corporation arising under or out of certain agreements between said

2 parties dated May 9, 1918, and May 22, 1918, respectively, and more particularly mentioned and described in the said annexed petition, and granting such other and further relief as may be just and proper.

Dated, New York, December 17, 1924.

Yours, etc., WILLIAM HAYWARD,
United States Attorney for the Southern District of New York,
Solicitor for the United States of America, Petitioner.

To: RUSHMORE, BISBEE & STERN, Esqs.,
Solicitors for Defendant and its Receivers,
61 Broadway, New York City.

CHADBOURNE, BABBITT & WALLACE, Esqs.,
Solicitors for Defendant,
14 Wall Street, New York City.

ROUNDS, SCHURMAN & DWIGHT, Esqs.,
Solicitors for American Cyanamid Co.,
100 Broadway, New York City.

HENRY C. WILLCOX, Esq.,
Solicitor for American Surety Co. et al.,
100 Broadway, New York City.

WHITE & CASE, Esqs.,
Solicitors for the New York Trust Co. et al.,
14 Wall Street, New York City.

BREED, ABBOTT & MORGAN, Esqs.,
Solicitors for National Newark & Essex Banking Co.,
32 Liberty Street, New York City.

CARDOZO & NATHAN, Esqs.,
Solicitors for American Exchange National Bank,
128 Broadway, New York City.

3 In United States District Court

Petition to establish priority

[Title omitted.]

To the honorable the judges of the United States for the Southern District of New York:

The petitioner, the United States of America, by its solicitor, William Hayward, United States attorney for the Southern District of New York, respectfully presents this its petition and shows unto this honorable court and alleges, upon information and belief:

First. That Butterworth-Judson Corporation is and at all the times herein mentioned was a corporation organized and existing under the laws of the State of New York, and having its principal place of business at No. 30 Church Street, in the city, State, and Southern District of New York.

Second. That on or about April 22nd, 1922, in the above-entitled suit in equity pending in this court, Henry G. Atha, James O'Grady,

4 at that time respectively comptroller and president of the defendant, and Thomas G. Haight, were duly appointed temporary receivers of all of the assets and properties of the defendant Butterworth-Judson Corporation, and thereafter and on or about May 25th, 1922, by order duly made and filed, said Henry G. Atha, James O'Grady, and Thomas G. Haight, were duly appointed permanent receivers and have qualified and are acting as such, excepting that the receiver James O'Grady has resigned, his resignation having been accepted to take effect at the close of business June 30th, 1924.

Third. That the bill of complaint herein contains, among others, the following allegations:

"Sixth. On information and belief that the defendant has outstanding obligations consisting of notes, open accounts, and other liabilities in excess of \$2,000,000; that practically all of such obligations are now due and payable; that the defendant has not on hand sufficient moneys to meet its said obligations now due.

Seventh. Upon information and belief that a banking depository of the defendant has just appropriated to the payment of certain obligations of defendant due to it, all the cash on open account deposited with it to the credit of the defendant in a very large amount. That certain other creditors of the defendant are pressing their claims for payment; are threatening to bring suit upon the same; that should such threatened action be so taken, it would, as your orator believes, result in judgments, executions, seizures, and forced sales of the property of the defendant and an interference 5 with or interruption of such business of the defendant would cause great and irreparable loss and injury to defendant and to all of its creditors; that the defendant will be better able to meet or to arrange to meet its said obligations, and that a sale of its said property will realize more for its creditors if the business to which

such property is devoted is being actually carried on at the time of such arrangement or sale.

Eighth. That an attempt of any creditor to enforce his claim at law will precipitate similar actions on the part of other creditors, and this in turn would lead to wasteful strife and controversy over and seizures and sacrifice of the assets of the defendant. Your orator believes that such controversy, seizure, and sacrifice can be avoided and the property preserved for equitable distribution among those entitled thereto only upon the intervention of this honorable court and the granting of equitable relief, including the appointment of a receiver or receivers; that the continuation of the business of the defendant under the direction of the honorable court is essential in order that hereafter the business and property of the defendant may be sold to the best advantage and so as to realize the good-will value and other value belonging thereto; that defendant has not and will not have sufficient funds to enable its business to be conducted unless a receiver or receivers shall be appointed who can temporarily borrow the necessary funds on receivers' certificates

6 certificates or otherwise for that purpose, pursuant to the approval of this honorable court; and that unless this honorable court will deal with the properties of the defendant as a trust fund for the payment of its creditors, as their interests shall appear, the properties will be dissipated, wasted, and sacrificed to the great and irreparable injury of the creditors of the defendant."

Fourth. That the answer of the defendant Butterworth-Judson Corporation to the bill of complaint admitted each and every allegation contained in the bill of complaint, including the foregoing paragraphs thereof, and submitted its rights in the premises to the protection of this honorable court.

Fifth. That the order of this court under date of April 22nd, 1922, appointing the temporary receivers in this cause, orders, adjudges, and decrees, among other things, that "the defendant (Butterworth-Judson Corporation), though appearing to have assets of large value, is now unable to meet its matured and immediately maturing obligations and will continue for a considerable time to be unable to meet such matured and maturing obligations or any substantial portion thereof."

Sixth. That the facts with respect to the institution of this action and of the proceedings thereunder are, as hereinafter set forth, that the Butterworth-Judson Corporation, during the war, was 7 engaged in the manufacture of picric acid and other war commodities for several governments, and its plant facilities were expanded and adapted for such manufacture. After the war the manufacture of these war commodities not being profitable the defendant turned to the manufacture of heavy chemicals, acids, and dyes, which business also was increasingly unprofitable to such an extent that the defendant Butterworth-Judson Corporation for a long period of time prior to April 22nd, 1922, had been unable to meet its obligations and liabilities, including an obligation due to,

the United States of America, the details of which will be hereafter set forth, and including notes of the defendant corporation of about \$1,225,000, certain of which notes, in the amount stated, were held by the following banks: The Chase National Bank of the City of New York, \$250,000, due November 29th, 1920, and \$350,000, due December 8th, 1920; the Liberty National Bank, later merged with the New York Trust Company under the title "The New York Trust Company," \$100,000, due December 17, 1920; the American Exchange National Bank, \$300,000, due on demand; National Newark & Essex Banking Company, \$225,000, due on demand.

Seventh. That the several notes of the defendant Butterworth-Judson Corporation not having been met at maturity thereof,
8 the Chase National Bank, on November 29, 1920, applied the accounts of Butterworth-Judson Corporation on deposit with it, amounting to \$176,180.85, against the note of the Butterworth-Judson Corporation by it held; on December 17th, 1920, The New York Trust Company appropriated the balance to the credit of the Butterworth-Judson Corporation with it, amounting to \$68,643.53, toward payment of the obligation evidenced by the note held by it; that thereafter the account in The New York Trust Company was nominally reinstated, and on May 31st, 1921, The New York Trust Company again so appropriated the balance on deposit with it, then amounting to \$69,314.98; on June 1st, 1921, the American Exchange National Bank appropriated the balance to the credit of the Butterworth-Judson Corporation with it, amounting to \$115,350.03, toward payment of the obligation evidenced by the note held by it, and on May 31st, 1921, the National Newark & Essex Banking Company appropriated the balance to the credit of the Butterworth-Judson Corporation with it, amounting to \$101,144.46, toward payment of the obligation evidenced by the note held by it.

Eighth. That thereafter and pursuant to efforts upon the part of the creditors of the Butterworth-Judson Corporation and of the corporation itself, the amounts so appropriated by the said several banks, excepting The New York Trust Company, were nominally reinstated to the credit of the Butterworth-Judson Corporation, but thereafter and immediately before or at the time of the appointment of the temporary receivers herein, on April 22nd, 1922, the Chase National Bank of the City of New York, the Liberty National Bank, the American Exchange National Bank, and the National Newark & Essex Banking Company, and each of them, appropriated toward payment of their respective claims against the Butterworth-Judson Corporation the balances then remaining on deposit with them in the account of said corporation, respectively, as follows: The Chase National Bank of the City of New York, \$232,844.80; the Liberty National Bank, merged with New York Trust Company under the title "The New York Trust Company," \$70,119.49; the American Exchange National Bank, \$115,501.60; National Newark & Essex Banking Company, \$101,166.10.

Ninth. That the United States of America has alleged in an action pending in this court, and more particularly referred to in paragraph nineteenth of this petition, that the appropriation of the said balances by the said banks and each of them was wrongful, and that the monies so appropriated are the property of the United States of America and are the balances remaining on hand in said respective banks out of an advance of \$1,500,000 and replenishments thereof, made by the United States of America to the Butterworth-Judson Corporation pursuant to two agreements between the United States of America and Butterworth-Judson Corporation dated, respectively, May 9th, 1918, and May 22nd, 1918, and providing for the erection of a plant for the manufacture of picric acid and for the manufacture and delivery of picric acid thereat.

10 Tenth. That by reason of the inability of the Butterworth-Judson Corporation to meet and discharge its obligations and liabilities, its creditors were obliged to and did interest themselves in the affairs of the Butterworth-Judson Corporation, representation being arranged for such creditors upon the board of directors of the Butterworth-Judson Corporation and a creditors' committee being appointed in or about the month of December, 1920, which acted for and with the Butterworth-Judson Corporation in connection with efforts to place it in a position to meet its obligations and liabilities, such creditors' committee and the Butterworth-Judson Corporation, among other things, procuring on December 31st, 1920, an extension of time from the creditors of the Butterworth-Judson Corporation for the payment of their respective claims, such extension expiring on July 1st, 1921.

Eleventh. That a substantial portion of the property and assets of Butterworth-Judson Corporation had been acquired by conveyance of all the properties and assets of American Synthetic Dyes (Inc.) to it, Butterworth-Judson Corporation becoming the owner and holder of all of the issued capital stock of American Synthetic Dyes (Inc.); that against said last-named corporation there existed a claim of one Donald MacKellar upon which he had brought an action in the Supreme Court, Kings County, New York, and in March 15, 1922, recovered judgment against said American Synthetic Dyes (Inc.), for \$336,316.10.

Twelfth. That a stay of execution was granted in said action of said MacKellar against American Synthetic Dyes (Inc.), expiring April 15th, 1922.

11 Thirteenth. That neither Butterworth-Judson Corporation nor American Synthetic Dyes (Inc.), was ever able to satisfy or have discharged or vacated the judgment so obtained.

Fourteenth. That the claim of said MacKellar so reduced to judgment by him was, in fact, a liability of Butterworth-Judson Corporation and was and has been so recognized by it and by this court, which by order herein dated May 24th, 1922, authorized the receivers herein to retain and continue the services of attorneys and counsel in said action of MacKellar against American Synthetic Dyes

(Inc.) and any proceedings directly or indirectly resulting therefrom, and thereafter, by order herein dated February 27th, 1923, empowering the receivers herein to borrow funds and to issue their certificate of indebtedness as receivers for such purposes, directed that the lien of the receivers' certificates so issued should be junior and subordinate to any lien, interest or claim of creditors of American Synthetic Dyes (Inc.), which might be enforceable by said creditors against or out of any real or personal property conveyed by American Synthetic Dyes (Inc.) to Butterworth-Judson Corporation, and thereafter and by order herein dated July 9th, 1923, authorized a settlement and adjustment of said action by the receivers herein.

[The allegations of the petition (paragraphs 11 to 17, inclusive) with respect to the claim and judgment of Donald MacKellar are solely for the purpose of showing that said claim and judgment constituted a liability of Butterworth-Judson Corporation as therein stated, there being no intention by such averments to allege an act of bankruptcy.]

12 Fifteenth. That various mortgages and taxes upon the real property of Butterworth-Judson Corporation had, prior to the receivership herein, become due and payable, and were then unpaid.

Sixteenth. That on or about April 12, 1923, the United States of America filed its claim for additional taxes against the Butterworth-Judson Corporation for the year 1917 herein, in the amount of \$228,374.09.

Seventeenth. That as a result of the actions and proceedings of creditors as herein set forth, and of the failure and inability of Butterworth-Judson Corporation, aided by its creditors, to effect payment of its liabilities and the satisfaction, discharge, or vacating of said MacKellar judgment, Hay Foundry & Iron Works (Inc.), the complainant herein, a simple contract creditor, on April 22, 1922, filed its bill of complaint herein for the appointment of receivers for the protection of creditors of Butterworth-Judson Corporation, all with the full knowledge and consent of Butterworth-Judson Corporation, which on the said 22nd day of April, 1922, by its duly authorized attorneys, appeared, answered as hereinbefore set forth in paragraph fourth of this petition and submitted its rights in the premises to the protection of the court; and consented in writing by its authorized attorneys to the entry of a decree appointing receivers of all of its property, in accordance with an understanding previously had that it would do so, the creditors having determined to make an application to the court for the appointment of receivers.

13 Eighteenth. That on April 22, 1922, Butterworth-Judson Corporation was insolvent and the aggregate of its property at a fair valuation was not sufficient to pay its debts, and the aggregate of its property at a fair valuation is not now sufficient to pay its debts, nor has such aggregate of its property been sufficient to pay its debts at any time since April 22, 1922. That on April 22,

1922, the debts of the Butterworth-Judson Corporation amounted to approximately \$3,000,000, and that at such time the aggregate of its property at a fair valuation was not in excess of \$1,500,000.

Nineteenth. That the United States of America has duly filed with the receivers herein a proof of claim against the Butterworth-Judson Corporation, verified September 1, 1922, a copy whereof is hereto annexed, marked "Exhibit A" and made a part of this petition as though set forth at length herein, which proof of claim sets forth the nature, character, and amount of the claim of the United States of America. That in and by such proof of claim, the United States of America claims that under the statute in such case made and provided, to wit, section 3466 of the Revised Statutes of the United States, it is entitled to priority in payment and to a preference of its said claim.

Twentieth. That the amount of said claim of the United States of America against the Butterworth-Judson Corporation is the subject of an action in equity for an accounting now pending in the United States District Court, Southern District of New York, in Equity No. E 25-351, brought by leave of this court granted in an order duly made and entered herein on or about July 21, 1922, and entitled:

14 "United States District Court, Southern District of New York, in equity. United States of America, complainant, against Butterworth-Judson Corporation, Henry G. Atha, James O'Grady, and Thomas G. Haight as receivers of Butterworth-Judson Corporation, the Chase National Bank of the City of New York, the American Exchange National Bank of the City of New York, the New York Trust Company, National Newark & Essex Banking Company, American Surety Company of New York, Fidelity & Deposit Company of Maryland, United States Fidelity & Guaranty Company, the Aetna Casualty & Surety Company, Massachusetts Bonding & Insurance Company, New Amsterdam Casualty Company, Globe Indemnity Company, and Hartford Accident & Indemnity Company, defendants."

Twenty-first. That said claim of the United States of America against Butterworth-Judson Corporation as set forth in said proof of claim filed by the United States of America herein and which is the subject of said action now pending in this court, in Equity No.

15 25-351, may be subdivided into three parts: One, involving the sum of \$528,009.67 conceded by the Butterworth-Judson Corporation to be due to the United States and alleged by the United States to have been wrongfully appropriated by the Chase National Bank of the City of New York, The New York Trust Company, the American Exchange National Bank, and the National Newark & Essex Banking Company; another, involving the sum of \$540,000 alleged by the Butterworth-Judson Corporation and its receivers herein to be liquidated damages to which the Butterworth-Judson Corporation is entitled under the agreement mentioned in paragraph ninth of this petition, and made the subject of a counter-

claim and defense in the answer of Butterworth-Judson Corporation and its receivers to the complaint in said action; and the third involving the sum of approximately \$74,627.19, being the conceded balance of the claim of the United States of America against Butterworth-Judson Corporation over and about the amounts represented by the two several items of \$528,009.67 and \$540,000 referred to above.

Twenty-second. That the United States of America has appealed to the Supreme Court of the United States from a decision of the United States Circuit Court of Appeals for the Second Circuit, affirming an order of the United States District Court for the Southern District of New York dismissing the bill of complaint in said action in this court in Equity No. 25-351 as to the defendant banks and holding that their appropriations of the balances respectively on deposit with them in the several accounts standing in the name of the Butterworth-Judson Corporation as hereinbefore set forth were proper. That said appeal is now pending and undetermined. That in the event of the dismissal thereof, the United States of America will assert its claim for the sum of 16 \$528,009.67 so appropriated against the Butterworth-Judson Corporation.

Twenty-third. That the United States District Court for the Southern District of New York has denied a motion in said action in Equity No. 25-351, to strike out the defense and counterclaim of the Butterworth-Judson Corporation and its receiver with respect to the \$540,000 hereinbefore referred to, and the decision of the court in so doing may not be reviewed until final judgment is entered in said action.

Twenty-fourth. That as appears from the foregoing, the United States of America has an undisputed contract claim against the Butterworth-Judson Corporation herein amounting to approximately \$74,627.19, and two additional claims which are the subject of pending litigation amounting, respectively, to \$528,009.67 and \$540,000. That the United States of America claims to be entitled to priority in payment and preference in respect to each of these claims. That such right to priority in payment and preference is or may be disputed by certain of the parties in interest herein and by other creditors of Butterworth-Judson Corporation. That since the assets of the Butterworth-Judson Corporation are not sufficient to pay its liabilities, as hereinbefore appears, it is important to the United States of America and other creditors and essential to those interested in the administration of the receivership herein that the status of the contract claims of the United States of America herein should be determined, and that its claim to a priority in payment and preference, pursuant to the statute in such case made and provided, should be adjudicated by this court.

17 Wherefore, petitioner prays that it be ordered, adjudged, and decreed herein that the United States of America is entitled to priority in payment and preference of its claims against

the Butterworth-Judson Corporation arising under or out of the agreements aforesaid of May 9 and May 22, 1918; that it be ordered, adjudged, and decreed that such right of the United States of America to priority in payment and preference extends to the sum of approximately \$74,627.19 concededly due to it by the Butterworth-Judson Corporation as well as to any other and further amounts that may be adjudicated to be due by Butterworth-Judson Corporation to the United States of America under or arising out of the said agreements between them dated May 9 and May 22, 1918; that in the event that the answers, if any, to this petition should raise questions of fact which this honorable court may deem it necessary to have determined, that a special master be appointed herein to hear evidence and determine the same; that this honorable court grant such other and further relief in the premises as may be just and proper.

Dated, New York, December 17, 1924.

UNITED STATES OF AMERICA,
Petitioner.

By WILLIAM HAYWARD,
Its Solicitor.

VICTOR HOUSE,
Special Assistant to the United States Attorney. Of Counsel.

(The bill of complaint, answer and order appointing receivers in the suit of Hay Foundry & Iron Works v. Butterworth-Judson Corporation are to be considered as exhibits to this petition.)

18 Sworn to by Victor House. Jurat omitted in printing.

19 *Exhibit A to petition*

[Title omitted.]

UNITED STATES OF AMERICA,
STATE OF NEW YORK,
County of New York, ss:

At the Borough of Manhattan, city of New York, State of New York, on the 1st day of September, 1922, came Thomas J. Crawford, residing at 285 Haven Avenue in the county of New York, in the State of New York, and made oath and says that he is an assistant United States attorney for the Southern District of New York; that he is duly authorized to make this proof of claim, and alleges upon information and belief:

I. That the above-named defendant, Butterworth-Judson Corporation, of which receivers were appointed in the above-entitled action by order of the above court made and entered April 22, 1922, was, on or before the filing of said order, and still is, justly indebted to the United States of America in the sum of one million one hundred fifty-one thousand four hundred fifty (\$1,151,450) dollars; that the consideration of said debt is as follows:

20 II. That on or about May 9, 1918, said Butterworth-Judson Corporation and said United States of America entered into a contract in writing for the construction and operation of a plant and for the manufacture and delivery by said Butterworth-Judson Corporation to said United States of America of picric acid for the use of the War Department of said United States of America upon the terms and conditions specified in said contract, and that on May 22, 1918, a supplemental agreement was entered into between the said parties whereby said United States of America agreed to advance to said Butterworth-Judson Corporation the sum of one million five hundred thousand (\$1,500,000) dollars upon certain terms and conditions as specified in said agreement, reference to the original of which is hereby made.

III. That as collateral security for the recoupment or return of the above-mentioned advance and for an accounting thereof, said Butterworth-Judson Corporation under said supplemental agreement was required to and did furnish a surety bond in the sum of seven hundred fifty thousand (\$750,000) dollars, conditioned for the performance of its obligations under said supplemental agreement.

IV. That thereupon and on or about May 22, 1918, said United States of America advanced to and paid to said Butterworth-Judson Corporation funds to the amount of one million five hundred thousand (\$1,500,000) dollars for the specific purposes and under the terms and conditions set forth in said supplemental agreement, dated May 22, 1918.

21 V. That thereafter and on or about December 28, 1918, said United States of America terminated said contracts, dated May 9, 1918, and May 22, 1918, and thereupon requested in writing an accounting by said Butterworth-Judson Corporation of said sum of one million five hundred thousand (\$1,500,000) dollars advanced and paid to it, as aforesaid.

VI. That said Butterworth-Judson Corporation has not returned or accounted for any part of such indebtedness of one million five hundred thousand (\$1,500,000) dollars except the sum of three hundred forty-eight thousand five hundred fifty (\$348,550) dollars.

VII. That on or about July 2, 1922, an order was made in the above-entitled action by the above-named court authorizing and granting leave to said United States of America to institute, prosecute, and maintain an action in said court against Thomas G. Haight, Henry G. Atha, and James O'Grady, as receivers of the Butterworth-Judson Corporation, separately or in conjunction with such other parties defendant as might be deemed advisable by said United States of America, for an accounting of the balance remaining unaccounted for of such advance of one million five hundred thousand (\$1,500,000) dollars.

VIII. That said United States of America claims that it is entitled herein to priority in payment and to a preference pursuant to the statute in such case made and provided.

22 IX. That no part of said claim of one million one hundred fifty-one thousand four hundred fifty (\$1,151,450) dollars has been paid, although duly demanded, and the whole thereof is now due and owing; that no judgment has been rendered thereon; that there are no offsets or counterclaims to the same; that said United States of America has not nor has any person by its order, to the knowledge or belief of deponent, for its use had or received any manner of security for said debt whatever except as aforesaid.

THOMAS J. CRAWFORD.

Subscribed and sworn to before me this 1st day of September, 1922.

[SEAL.]

SAM'L M. HITCHCOCK,
U. S. Commissioner, Southern District of New York.

23 In United States District Court

Stipulation re facts

[Title omitted.]

On the hearing on December 29, 1924, on the petition of the United States to establish priority, verified December 17, 1924, it is stipulated in open court as follows:

1. On this hearing the right of the United States to priority is to be determined on the motion of the receivers presented at the hearing in which The New York Trust Company, the Chase National Bank of the City of New York, National Newark & Essex Banking Company, American Exchange National Bank, and the merchandise creditors' committee join to dismiss the petition of the United States, as upon a demurrer to a bill of complaint, leave to be granted to the moving parties, in the event the motion is overruled, to file answers raising issues of fact.

2. For the purposes of the present motion only:

(a) The bill of complaint filed herein by Hay Foundry and Iron Works, complainant, against Butterworth-Judson Corporation, defendant, the answer of Butterworth-Judson Corporation to said bill of complaint, and the decree of this court appointing temporary receivers are to be considered as exhibits to the petition of the United States.

(b) The petition of the United States is amended by striking from paragraph numbered "seventeenth" (fol. 39) the clause "and joined in the prayer of the complainant herein," and substituting in place thereof the clause "in paragraph fourth of this petition, and submitted its rights in the premises to the protection of the court."

(c) The petition of the United States is further amended by striking from paragraph numbered "seventeenth" (fols. 39-40) the final clause thereof, "in accordance with an arrangement by it previously made so to do," and substituting in place thereof the clause "in accordance with an understanding previously had that

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it would do so, the creditors having determined to make an application to the court for the appointment of receivers."

(d) The allegations of the petition (paragraphs "eleventh" to "seventeenth," inclusive, folios 33-39) with respect to the claim and judgment of Donald MacKellar are solely for the purpose of showing that said claim and judgment constituted a liability of Butterworth-Judson Corporation as therein stated, there being no intention by such averments to allege an act of bankruptcy, it being contended by the moving parties that the facts with respect to said claim and judgment are not fully set forth in its petition.

Dated, December 29, 1924.

WILLIAM HAYWARD,

United States Attorney.

RUSHMORE, BISBEE & STERN,

Solicitors for Thomas G. Haight and Henry G. Atha,

Receivers of Butterworth-Judson Corporation.

WHITE & CASE,

*Solicitors for The New York Trust Company
and the Chase National Bank of the City of New York.*

BREED, ABBOTT & MORGAN,

Solicitors for National Newark & Essex Banking Company.

CARDOZO & NATHAN;

Solicitors for American Exchange National Bank.

WHITMAN, OTTINGER & RANSOM,

Solicitors for Merchandise Creditors' Committee.

Bill of complaint

[Title omitted.]

*To the honorable the judges of the United States District Court
for the Southern District of New York:*

Your orator, Hay Foundry and Iron Works, a corporation duly organized and existing under the laws of the State of New Jersey, and a citizen of said State, brings this, its bill of complaint, on its own behalf and on behalf of all other creditors of the defendant, Butterworth-Judson Corporation, who may join in the prosecution of this suit, and thereupon complains and alleges as follows:

First. That this is a suit of a civil nature, wherein there is involved a controversy wholly between citizens of different States and wherein the matter and amount in dispute, exclusive of interest and costs, exceeds the sum or value of \$3,000.

Second. That your orator, at all the times hereinafter mentioned, was and now is a corporation duly organized and existing under the laws of the State of New Jersey, and a resident and citizen of said State, and that, at all the times herein-after mentioned, the defendant Butterworth-Judson Corporation,

was and it now is a corporation duly organized and existing under and by virtue of the laws of the State of New York and had and has its principal office in the city and county of New York, in said State of New York, and is a resident of said county.

Third. On information and belief that the defendant was organized for the purpose principally of manufacturing and dealing in and with chemicals and chemical products and dyes and dyestuffs, and is engaged in such business at Newark, in the county of Essex, State of New Jersey, where it carries a large stock of raw materials, acids, chemicals, and fixtures, and where it has other assets of large value, including its manufacturing plant; and that on information and belief it has other assets of large value in the city, county, and State of New York, Southern District of New York, where its executive offices are located.

Fourth. On information and belief that the defendant has outstanding 100,000 shares of capital stock, of which 25,000 shares are preferred stock, of the par value of \$100 each, amounting to \$2,500,000 par value, and 75,000 shares are common stock, without par value.

Fifth. That the defendant is indebted to your orator in the sum of \$7,988.43, for labor performed and goods and materials supplied.

That payment of said sum has been duly demanded by your
28 orator of the defendant and that payment has been refused,
and that the same is now due and unpaid.

Sixth. On information and belief that the defendant has outstanding obligations consisting of notes, open accounts, and other liabilities in excess of \$2,000,000; that practically all of such obligations are now due and payable; that the defendant has not on hand sufficient moneys to meet its said obligations now due.

That the actual value of all of the defendant's property, if properly and prudently realized on, would be more than enough to pay off all of its said obligations; but that said property consists of a manufacturing plant and other assets that constitute a single entire plant and in great part essential in combination to the conduct of the business in which they have heretofore been used, and that the value of said property would be immeasurably and largely impaired, unless the business to which it is so devoted can and shall be carried on without interruption. The business of the defendant includes the manufacture and sale of various chemicals and dyestuffs to customers under sales contracts, and a discontinuance of manufacture and delivery under such contracts will, as your orator believes, result in a substantial loss to the defendant, its creditors, and stockholders.

Seventh. Upon information and belief that a banking depositary of the defendant has just appropriated to the payment of certain obligations of defendant due to it all the cash on open account deposited with it to the credit of the defendant in a very large
29 amount. That certain other creditors of the defendant are pressing their claims for payment; are threatening to bring suit upon the same; that should such threatened action be so taken,

it would, as your orator believes, result in judgments, executions, seizures, and forced sales of the property of the defendant, and an interference with and an interruption of the conduct of said business; that any such interference with or interruption of such business of the defendant would cause great and irreparable loss and injury to defendant and to all of its creditors: that the defendant will be better able to meet or to arrange to meet its said obligations, and that a sale of its said property will realize more for its creditors, if the business to which such property is devoted is being actually carried on at the time of such arrangement or sale.

Eight. That an attempt of any creditor to enforce his claim at law will precipitate similar actions on the part of other creditors, and this in turn would lead to wasteful strife and controversy over and seizures and sacrifice of the assets of the defendant. Your orator believes that such controversy, seizure, and sacrifice can be avoided and the property preserved for equitable distribution among those entitled thereto, only upon the intervention of this honorable court and the granting of equitable relief, including the appointment of a receiver or receivers; that the continuation of the business of the defendant under the direction of this honorable court is essential in order that hereafter the business and property of the defendant may be sold to the best advantage and so as to realize the good-will value and other value belonging thereto; that defendant has not and will not have sufficient funds to enable its business to be conducted unless a receiver or receivers shall be appointed who can temporarily borrow the necessary funds on receivers' certificates, or otherwise, for that purpose, pursuant to the approval of this honorable court; and that unless this honorable court will deal with the properties of defendant as a trust fund for the payment of its creditors, as their interests therein shall appear, the properties will be dissipated, wasted, and sacrificed to the great and irreparable injury of the creditors of the defendant.

Ninth. That inasmuch as your orator has no adequate relief at law, but can have relief only in equity, your orator files this bill of complaint on behalf of itself and all other creditors of the defendant who may come in and contribute to the expenses of this suit, and your orator prays for equitable relief as follows:

(1) That pending this suit this honorable court will forthwith appoint a receiver or receivers of all and singular the property and assets of every nature, wheresoever situated, held, owned, or controlled by the defendant, with full power and authority to take the same into his or their possession, hold, manage, and conduct the business now being conducted by the defendant, with such powers as this honorable court may from time to time grant, and for that purpose, with power to incur such expenses as may be necessary or advisable in connection therewith; to purchase for cash or on credit such merchandise, supplies, materials, or other property as may be necessary or advisable, in connection with the administration of the assets of the defendant; to sell in the regular

course or conduct of the business, or otherwise, all or any part of the assets and merchandise of the defendant; to bring suit for, collect, receive, and take to his or their possession all the property and assets, real and personal, goods, chattels, credits, rights, claims and equities, books, papers, and securities, and all other property whatsoever and wheresoever situated of the defendant; to institute, prosecute, become parties to, intervene in, compromise, or defend suits and actions at law or in equity, or otherwise, either for the recovery or the protection or maintenance of any of the property and assets of the defendant as he or they may deem necessary or proper, including the institution or prosecution of such ancillary proceedings as said receiver or receivers may deem advisable, and including any other suits, actions, or proceedings at law or in equity, or otherwise, in which the defendant may have any interest as plaintiff, defendant, or otherwise, including the power to continue any such pending suits, and defend or otherwise dispose of any such proceedings, suits, or actions; to settle or compound or make allowances on any or all debts now due and owing or which may hereafter be due or owing to the defendant as he or they may deem advisable or proper, subject to the further authorization of this honorable court; to pay any claims for wages, or otherwise, that may be entitled to priority, and with the other usual powers of receivers in such cases; and that the officers, managers, superintendents, agents, and employees of the defendant be required forthwith to deliver up to said receiver or receivers possession of all and every part of the properties of the defendant wheresoever situated, including the several books, vouchers, and papers, in any way relating to the business of the defendant.

(2) That this honorable court will administer all and singular the property, rights, and business belonging to the defendant, and will adjudicate, enforce, and adjust the rights, liens, equities, and claims of all creditors and stockholders of the defendant, including your orator, as the same may be determined.

(3) That all creditors, stockholders, and other persons be enjoined from instituting or presenting or continuing the prosecution of any actions, suits, or proceedings at law or in equity, or under any statute, against the defendant, and from levying any attachments, executions, or other processes upon or against any of the properties of the defendant, or from taking or attempting to take into their possession the property or any part of the property of the defendant.

(4) That a writ or writs of injunction issue out of and under the seal of this honorable court, to be issued by one of your honors, directing, enjoining, and restraining the defendant and the officers, superintendents, agents, and employees of the defendant from interfering with, transferring, selling, or disposing of any of the property or income of the defendant, or from taking possession of or levying upon or attempting to sell or dispose of in any manner any part of the property of the defendant.

33 (5) That this honorable court will grant unto your orator not only a writ of injunction but also a writ of subpoena of the United States of America, issued out of and under the seal of this honorable court, and directed to the defendant, therein and thereby commanding it on a certain day therein named, under a certain penalty, before this honorable court to answer (but not under oath, an answer under oath being hereby expressly waived) of and in the premises, and to stand by, perform and abide by such orders, directions and decrees as may be made against it in the premises and as shall seem proper and right in equity and in good conscience.

(6) That at such time as may be found just and proper the properties of the defendant may be ordered to be sold in whole or in part, in such manner and upon such terms and conditions as this honorable court shall deem just and equitable, and that any such order of sale shall make proper and suitable provision for the preservation of all equities, rights, priorities, claims and liens of the creditors of the defendant, and shall provide for the sale of the property of the defendant subject to or free and clear from any and all liens and encumbrances, in whole or in part, in such manner and upon such terms as this honorable court may direct, and that the proceeds of any such sale be distributed among those entitled thereto as this honorable court shall adjudicate; and that your orator may have such other and further and different relief in the premises as to this honorable court may seem proper, and as may be necessary fully to

protect and enforce the rights and equities of your orator and 34 of all the creditors and stockholders of the defendant; and

that in case of any sale herein of the property of the defendant, it may be directed to make, execute, and deliver to the accepted purchaser or purchasers upon any such sale, such releases, bills of sale and conveyances as may be necessary or proper to vest in such purchaser or purchasers the title to all such several properties.

X/ (7) That such order shall be made by this honorable court as to the service of this bill of complaint and of any order that may be made in this suit, as may be deemed sufficient and proper to this honorable court, and that your orator may have such other and further relief in the premises as the nature and circumstances of the case may require and as to this honorable court may seem just and proper.

And your orator will ever pray, etc.

By BREED, ABBOTT & MORGAN,
Its Solicitors.

Office and post-office address, 32 Liberty Street, Borough of Manhattan, New York City.

APRIL 22, 1922.

SUMNER FORD, *Of Counsel.*

35-36 Sworn by J. Lewis Hay. Jurat omitted in printing.

37

In United States District Court

Answer

[Title omitted.]

The defendant above named, for answer to the bill of complaint herein, admits each and every allegation contained in said bill of complaint, and submits its rights in the premises to the protection of this honorable court.

BUTTERWORTH-JUDSON CORPORATION,
By JAMES O'GRADY, President.

CHADBOURNE, BABBITT & WALLACE,

Solicitors for said Defendant,

Office and post-office address, 14 Wall Street, New York, N. Y.

HENRY J. WOLFF, *Of Counsel.*

38 Sworn to by James O'Grady. Jurat omitted in printing.

39

In United States District Court

Order appointing receivers

[Title omitted.]

And now, on this 22nd day of April, 1922, this cause came on to be heard upon the bill of complaint duly filed herein and the answer of the defendant above named consenting to this decree, and after due deliberation it is, upon motion of the solicitors for the complainant and on consent of solicitors for creditors' committee, W. Cleveland Runyon, appearing for Donald C. McKellar, and not opposing,

Ordered, adjudged, and decreed that the defendant, though appearing to have assets of large value, is now unable to meet its matured and immediately maturing obligations and will continue for a considerable time to be unable to meet such matured and maturing obligations or any substantial portion thereof; and it is

Further ordered, adjudged, and decreed that the complainant is entitled to the relief herein granted, that it has no adequate remedy save through the granting of this decree, and that it is necessary for the protection and preservation of the respective

~~X~~ rights and equities of the complainant and all other creditors of the defendant that the property and business of the defendant be preserved and administered in this suit through receivers to be appointed by this court, and that it is necessary that receivers of the defendant and of its property should be appointed forthwith, although the defendant is alleged to be solvent, and with the powers herein granted; and it is further

Ordered, adjudged, and decreed that Henry G. Atha, of Newark, New Jersey; James O'Grady, Scarsdale, N. Y., and Thomas G. Haight, of Jersey City, be, and they hereby are, appointed temporary receivers of the defendant, Butterworth-Judson Corporation,

and of all the properties of said defendant, real, personal, and mixed, and of whatsoever kind and description, including all lands, real estate, and buildings, premises and appurtenances, owned, controlled, leased, or operated by said defendant, and all materials, supplies, equipment, merchandise, machinery, books of account, records, and other books, papers, and accounts, cash on hand, in bank, or on deposit, things in action, credits, stocks, bonds, securities, deeds, leases, contracts, muniments of title, letters patent, patents, patent rights, bills and accounts receivable, rents, issues, profits, tolls, and income accruing and to accrue, as well as all interests, easements, privileges, franchises, and appurtenances, and all assets and property of all and every kind, character, and description whatsoever of said defendant wheresoever situated; and it is further

Ordered that all creditors of the said defendant, Butter-
41 worth-Judson Corporation, show cause at a term of this court to be held on May 15th, 1922, at 4.30 p. m., in courtroom No. 1, Woolworth Building, No. 233 Broadway, Borough of Manhattan, New York City, why the said receivership should not be made permanent, and why such other or further relief should not be granted as may be just.

Notice of hearing of said application shall be given by mailing the same to each creditor of the corporation at his last known post office address, and by publication of a copy of this order in the New York Times, on the 1st and 8th days of May, 1922, respectively. Said notice shall be mailed not later than May 1, 1922, and may consist of a copy of this order. And it is further

Ordered, adjudged, and decreed that within two days after the date of this order a joint and several bond of said receivers in the sum of fifty thousand dollars (\$50,000) conditioned that they will well and truly perform the duties of their office and duly account for all moneys and properties which may come into their hands and abide by and perform all things which they shall be directed to do with sufficient sureties to be approved by this court, or one of the judges thereof, be filed with the clerk of this court; and it is

Further ordered, adjudged, and decreed that said defendant and all persons acting its direction shall, upon presentation of a certified copy of this order, deliver to the receivers any and all properties of the defendant, real, personal, or mixed, in their possession or under their control, and that all persons, including sheriffs and marshals, are enjoined from in any wise disturbing the possession of the receivers and from prosecuting any actions or suits which affect or may affect the property of said defendant, and from issuing or levying any writ of attachment, execution, or other process thereon; and it is

Further ordered, adjudged, and decreed that until the further order of this court said receivers be, and they hereby are, authorized forthwith to take and to have complete and exclusive control, possession, and custody of all the assets and property of the defendant.

ant, and all persons, firms, and corporations, including the defendant, its and their officers, agents, and servants, shall forthwith deliver to said receivers all properties of every nature and description and wheresoever located of the defendant; and it is

Further ordered, adjudged, and decreed that said receivers be, and they hereby are, authorized to continue, manage, operate, and conduct the business of the defendant until the further order of this court, with full authority to carry on, manage, operate, and conduct said business, to buy and sell merchandise, supplies, or stock in trade, for cash or on credit, and as may be deemed advisable by said receivers; to consider and determine which of the contracts, leases, or other contractual arrangements between defendant and any and all other persons and corporations they will renounce or adopt, and to adopt and perform such of said contracts, leases, or other contractual arrangements of the defendant as they may deem desirable or necessary in the conduct of the defendant's business or

in furtherance of its interests to adopt and perform, provided, 43 however, that pending the further order of this court none of said receivers' acts or omissions in the performance or failure to perform any of said contracts, leases, or other contractual arrangements shall constitute or be considered an election to adopt or an estoppel to renounce any of them; and it is

Further ordered, adjudged, and decreed that said receivers be, and they hereby are, authorized in their discretion to employ such managers, agents, employees, servants, accountants, attorneys, and counsel as may in their judgment be advisable or necessary in the management, conduct, control, or custody of the affairs of the defendant and of the assets thereof, and that said receivers be, and they hereby are, authorized to make such payments and disbursements as may be needful or proper for the preservation of the properties of the defendant, including authority to make payment of debts entitled to priority; and it is

Further ordered, adjudged, and decreed that said receivers be, and they hereby are, authorized to receive and collect the rents, incomes, and profits of any and all of the properties of the defendant, and to receive and collect any and all moneys due and owing to the defendant in any manner whatsoever, whether the same are now or shall hereafter become due and payable, and that said receivers be, and they hereby are, authorized to do such things, enter into such agreements, and employ such agents in connection with the management, care, and preservation of the properties of the defendant as they may deem advisable, and are authorized to incur such expenses and make such disbursements as may in their judgment be advisable or necessary in connection with the care, preservation, and maintenance of the properties of the defendant; and it is 44

Further ordered, adjudged, and decreed that said receivers be, and they hereby are, authorized and empowered to institute, prosecute, and defend, compromise, adjust, intervene in, or become parties to

such suits, actions, proceedings at law or in equity, including ancillary proceedings in State or Federal courts, and in the courts of any foreign country, as may in their judgment be necessary or proper for the protection, maintenance, and preservation of the assets of the defendant or the carrying out of the terms of this decree, and likewise to defend, compromise, or adjust or otherwise dispose of any or all suits, actions, or proceedings instituted against them as receivers or against the defendant, and also to appear in and conduct the prosecution or defense of any suit or adjust or compromise any actions or proceedings now pending in any court by or against the defendant where such prosecution, defense, or other disposition of such suits, actions, or proceedings will in the judgment of said receivers be advisable or proper for the protection of the properties of the defendant.

Further ordered, adjudged, and decreed that all creditors, stockholders, and other persons be enjoined from instituting or prosecuting or continuing the prosecution of any action or suits at law or in equity, or under any statute, against the defendant, and from levying any judgment, execution, or other process upon or against any 45 of the properties of the defendant, or from taking or attempting to take into their possession the property or any part of the property of the defendant.

AUGUSTUS N. HAND,
United States District Judge.

Dated, April 22, 1922.

We consent to the entry of the foregoing order.

CHADBOURNE, BABBITT & WALLACE,
Solicitors for Defendant.

RUSHMORE, BISBEE & STERN,
Solicitors for Creditors' Committee.

Motion to dismiss petition of United States

[Title omitted.]

Come now Thomas G. Haight and Henry G. Atha, receivers of Butterworth-Judson Corporation, and move to dismiss the petition of the United States to establish priority, verified December 17, 1924, on the ground that said petition does not allege facts sufficient to entitle it to the relief prayed.

Dated, New York, December 29, 1924.

RUSHMORE, BISBEE & STERN,
Solicitors for Thomas G. Haight and Harry G. Atha,
Receivers of Butterworth-Judson Corporation,
61 Broadway, Borough of Manhattan, New York City.

47 The undersigned join in the foregoing motion:

WHITE & CASE,

*Solicitors for The New York Trust Company**and the Chase National Bank,**14 Wall Street, New York.*

BREED, ABBOTT & MORGAN,

*Solicitors for National Newark &**Essex Banking Company,**32 Liberty Street, New York.*

CARDOZO & NATHAN,

*Solicitors for American Exchange National Bank,**128 Broadway, New York.*

WHITMAN, OTTINGER & RANSOM,

*Solicitors for Merchandise Creditors Committee,**120 Broadway, New York.*

48 In United States District Court

Opinion Feb. 24, 1925

[Title omitted.]

AUGUSTUS N. HAND, *District Judge:*

This matter comes up on a motion by the receivers in equity to dismiss a petition of the United States filed to have its claim arising under contracts with the Butterworth-Judson Corporation 49 adjudged prior to the claims of other creditors. The Government seeks priority under the provision of section 3466 of the Revised Statutes which reads as follows:

"Whenever any person indebted to the United States is insolvent or whenever the estate of any deceased debtor in the hands of executors or administrators, is insufficient to pay all the debts due from the deceased, the debts due to the United States shall be first satisfied, and the priority hereby established shall extend, as well to cases in which a debtor not having sufficient property to pay all his debts, makes a voluntary assignment thereof, or in which the estate and effects of an absconding, concealed, or absent debtor are attached by process of law as to cases in which an act of bankruptcy is committed."

The provisions of the bankruptcy statute defining acts of bankruptcy are as follows:

Section 3a, subdivision (4).

"Acts of bankruptcy by a person shall consist of his having * * *

(4) Made a general assignment for the benefit of his creditors, or, being insolvent, applied for a receiver or trustee for his property, or because of insolvency a receiver or trustee has been put in charge of his property under the laws of a State or a Territory or of the United States."

It is to be observed that while upon this motion to dismiss the petition of the United States it must be admitted that the 50 Butterworth-Judson Company was insolvent when receivers were appointed, the bill alleged solvency, and the answer while consenting to the order appointing receivers, filed an answer admitting the allegation of the bill and submitting the defendant's rights to the protection of the court but did not join in its answer in the prayer of the bill.

Under such circumstances it is the law of this circuit that the United States is not entitled to the priority which it here seeks. *Equitable Trust Company v. Connecticut Brass & Mfg. Corp.*, 290 Fed. 712.

X The company did not by admitting the allegations of the bill and consenting to the order appointing a receiver make "a voluntary assignment" of its property within the meaning of sec. 3466 of the Revised Statutes. Such an assignment means a conveyance for the benefit of its creditors ordinarily known as a general assignment. *In re Empire Metallic Bedstead Co.*, 98 Fed. 981; *Vaccaro v. Security Bank of Memphis*, 103 Fed. 436.

The receivers were not put in charge of the defendant's property because of insolvency, nor were they applied for by the Butterworth-Judson Corporation. The reason for appointing receivers must be determined by the record. The cases of *Equitable Trust Co. v. Connecticut Brass & Mfg. Co.*, 290 Fed. 712; *in re Valentine Bohl Co.*, 224 Fed. 685; *Anderson v. Myers*, 296 Fed. 101; *Strain v. U. S. Fidelity, etc., Co.*, 292 Fed. 694; *E. B. Badger v. Arnold*, 282 Fed. 115; *in re Spalding*, 139 Fed. 244, and the very recent case in the Sixth Circuit of *Davis v. Michigan Trust Company*, 2 Fed. (2nd) 194, in which Judge Mack followed the *Equitable Trust Company* case, make the law which this court must follow very clear.

51 See also *Moss National Bank v. Arend*, 146 Fed. at page 353; *in re Edward Ellsworth Co.*, 173 Fed. 699; *in re Big Pines Line & Transportation Co.*, 257 Fed. 141; *in re Morosco Holding Co., Inc.*, 296 Fed. 516; *Commonwealth v. Phenix Bank*, 11 Metc. (Mass.) 129.

So far as *Davis v. Pullen*, 277 Fed. 650, *Davis v. Miller Link Lumber Co.*, 296 Fed. 649, and *Bramwell v. U. S. Fidelity & Guaranty Co.*, 299 Fed. 705, differ from the foregoing cases they do not represent the law of this circuit. Judge Mack in *Davis v. Michigan Trust Co.*, supra, deliberately refused to follow the first two. I can not see any distinction between the *Equitable Trust Company* case and the present. Under the doctrine of that case the Government is not entitled to priority and that case is binding upon me. The recent case of *U. S. v. State of Oklahoma*, 261 U. S. 253, is not in point. When suits like the present reach the Supreme Court it may be that the line of reasoning of cases like *Bramwell v. U. S. Fidelity & Guaranty Co.*, 299 Fed. 705, may be adopted by that court. Until then the doctrine in this circuit is clear and controlling.

The petition of the United States to have its priority adjudged is dismissed.

A. N. H., D. J.

52 In United States District Court

Final decree March 10, 1925

[Title omitted.]

This cause duly came on further to be heard and was argued by counsel; and thereupon, upon consideration thereof, it is

Ordered, adjudged, and decreed that the petition of the United States of America, verified December 17, 1924, for priority in payment and preference of its claims against the Butterworth-Judson Corporation and its assets in the hands of its receivers be, and the same hereby is, dismissed on the ground that such petition, as amended and with the exhibits submitted therewith, does not set forth any ground for such priority or for the relief sought.

Dated March 10, 1925.

AUGUSTUS N. HAND,
U. S. D. J.

53 In United States District Court

Assignment of errors

[Title omitted.]

The petitioner, United States of America, a creditor of defendant, Butterworth-Judson Corporation, feeling itself aggrieved by the final decree dismissing its petition for priority in payment and preference of its claim against the Butterworth-Judson Corporation and its assets in the hands of its receivers, made and entered herein on March 10th, 1925, now appears by its solicitor, Emory R. Buckner, United States attorney for the Southern District of New York, and presents with the accompanying petition on appeal from the said final decree and each and every part thereof, the following assignment of errors:

First. The court erred in dismissing the petition of the United States of America, verified December 17, 1924, for priority in payment and preference of its claim against the Butterworth-Judson Corporation and its assets in the hands of its receivers.

54 Second. The court erred in holding that said petition, verified December 17, 1924, for such priority in payment and preference of the claims of the United States of America against the Butterworth-Judson Corporation and its assets in the hands of its receivers, with the exhibits attached thereto, does not set forth any ground for such priority or for any other relief.

Wherefore the petitioner, United States of America, prays that the decree so appealed from may be reversed and corrected and that a decree be made herein sustaining and allowing said petition.

Dated March 20th, 1925.

EMORY R. BUCKNER,

United States Attorney for the Southern District of New York, Solicitor for Petitioner.

Office & P. O. address, United States Court House & Post Office Building, Borough of Manhattan, New York, N. Y.

55

In United States District Court

Petition for appeal

[Title omitted.]

The United States of America, a creditor of Butterworth-Judson Corporation, feeling itself aggrieved by the final decree made and entered herein on March 10th, 1925, dismissing the petition of the United States of America, verified December 17, 1924, for priority in payment and preference of its claim against the Butterworth-Judson Corporation and its assets in the hands of its receivers, does hereby appeal from said final decree and from each and every part thereof to the United States Circuit Court of Appeals for the Second Circuit, for the reasons specified in the assignment of errors which is filed herewith, and prays for an order allowing this petitioner to prosecute said appeal, and that a transcript of the record, papers, and proceedings upon which said final decree was made may be duly authenticated and sent to the United States Circuit Court of Appeals for the Second Circuit; and that a citation be granted directed to Henry G. Atha and Thomas G. Haight, as receivers of the Butterworth-Judson Corporation, the Chase National

56 Bank of the City of New York, The New York Trust Company, the American Exchange National Bank of the City of New York, the National Newark & Essex Banking Company of Newark, N. J., and Harold J. Roig, E. V. O'Daniel, Edwin M. Allen, and W. A. Marshall, as committee of the general creditors of Butterworth-Judson Corporation, to appear before the United States Circuit Court of Appeals for the Second Circuit, to do and receive what may appertain to justice to be done in the premises.

And your petitioner will ever pray, etc.

Dated, New York, March 20th, 1925.

UNITED STATES OF AMERICA,

Appellant.

By EMORY R. BUCKNER,
*United States Attorney for the
Southern District of New York,
Solicitor for said claimant and appellant.*

Office & P. O. address, United States Court House & Post Office Building, Borough of Manhattan, New York, N. Y.

57

In United States District Court

Order allowing appeal

[Title omitted.]

Upon the petition of the United States of America, a creditor of Butterworth-Judson Corporation, it is, on motion of Emory R. Buckner, United States attorney for the Southern District of New York, solicitor for said petitioner,

Ordered that the appeal of said petitioner, United States of America, to the United States Circuit Court of Appeals for the Second Circuit from the final decree heretofore made and entered on March 10th, 1925, be, and the same hereby is, allowed; and it is further

Ordered that a certified copy of the record, papers, and proceedings herein be transmitted to the said United States Circuit Court of Appeals for the Second Circuit.

Jno. C. Knox,
U. S. District Judge.

58-59 Citation, in usual form, omitted in printing.

60 In United States District Court

Stipulation re transcript of record

[Title omitted.]

It is hereby stipulated and agreed that the foregoing is a true transcript of the record of the said District Court in the above-entitled matter as agreed on by the parties.

Dated, N. Y., April 10, 1925.

EMORY R. BUCKNER,
United States Attorney.

RUSHMORE, BISBEE & STERN,
*Solicitors for Thomas G. Haight and Henry G. Athé,
Receivers of Butterworth-Judson Corporation.*

WHITE & CASE,

*Solicitors for The New York Trust Company,
and the Chase National Bank of the City of New York.*

BREED, ABBOTT & MORGAN,

Solicitors for National Newark & Essex Banking Company.

CARDOZO & NATHAN,

Solicitors for American Exchange National Bank.

WHITMAN, OTTINGER & RANSOM,

Solicitors for Merchandise Creditors' Committee.

26 UNITED STATES VS. BUTTERWORTH-JUDSON CORPORATION

61 In United States District Court

Clerk's certificate

[Title omitted.]

I, Alexander Gilchrist, jr., clerk of the District Court of the United States of America for the Southern District of New York, do hereby certify that the foregoing is a correct transcript of the record of the said district in the above-entitled matter as agreed on by the parties.

In testimony whereof I have caused the seal of the said court to be hereunto affixed, at the city of New York, in the Southern District of New York, this —— day of April, in the year of our Lord one thousand nine hundred and twenty-five and of the independence of the said United States the one hundred and ——.

ALEX. GILCHRIST, Jr., Clerk.

62 In United States Circuit Court of Appeals for the Second Circuit

HAY FOUNDRY AND IRON WORKS, COMPLAINANT

Against

BUTTERWORTH-JUDSON CORPORATION, DEFENDANT; UNITED STATES OF AMERICA, INTERVENING PETITIONER-APPELLANT

Opinion

Before Rogers, Hough, and Hand, circuit judges

Rushmore, Bisbee & Stern, for the receivers; Eldon Bisbee, Bertram F. Shipman, of counsel; Emory R. Buckner, United States attorney for the Southern District of New York, for the petitioner-appellant; Alexander Holtzoff, special assistant to the Attorney General; Robert E. Manley, Charles L. Sylvester, assistant United States attorneys.

Per curiam: Decree affirmed on the decision of this court in Equitable Trust Company v. Connecticut Brass and Manufacturing Corporation, 290 Fed. 712.

63 In United States Circuit Court of Appeals

[Title omitted.]

Judgment filed May 20, 1925

Appeal from the District Court of the United States for the Southern District of New York.

This cause came on to be heard on the transcript of record from the District Court of the United States for the Southern District of New York and was argued by counsel.

On consideration whereof, it is now hereby ordered, adjudged, and decreed that the decree of said District Court be, and it hereby is, affirmed.

It is further ordered that a mandate issue forthwith to the said District Court in accordance with this decree.

C. M. H.

L. H.

64 [File endorsement omitted.]

In United States Circuit Court of Appeals

Clerk's certificate

I, William Parkin, clerk of the United States Circuit Court of Appeals for the Second Circuit, do hereby certify that the foregoing pages, numbered from 1 to 64, inclusive, contain a true and complete transcript of the record and proceedings had in said court in the case of Hay Foundry & Iron Works, plaintiff, against Butterworth-Judson Corporation, defendant, United States, appellant, as the same remain of record and on file in my office.

In testimony whereof I have caused the seal of the said court to be hereunto affixed at the city of New York, in the Southern District of New York, in the Second Circuit, this 20th day of May, in the year of our Lord one thousand nine hundred and twenty-five, and of the independence of the said United States the one hundred and forty-ninth.

[SEAL.]

WILLIAM PARKIN, Clerk.

Supreme Court of the United States

Order allowing certiorari. Filed June 1, 1295

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Second Circuit is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

○